

## NATURAL RESOURCES COMMISSION

### Meeting Minutes September 3, 2008

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, September 3, 2008. The following Commissioners were present: Jamie Bemis, Acting Chair, Montgomery Lovejoy, and Stephen Verrill. Alexander Easterday appeared at 8:15 p.m. and resumed his position as Chair. Delia Kaye, Natural Resources Director and Cynthia L. Gray, Natural Resources Administrative Assistant, were also present

**COMMISSION COMMENTS:** None

### **CONTINUANCES:**

**WARE / NOI** – 201 Independence Road and 525 Rear Lexington Road – Constructing two residential dwellings with associated driveway and utilities, in the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-974. Continued to September 17, 2008**

**NASHOBA BROOKS SCHOOL / NOI** – 200, 280 Strawberry Hill Road and 3B Macone Farm Lane – Removing one single-family dwelling, constructing four tennis courts and one soccer field, expanding the existing parking lot, constructing additional sidewalks, and stormwater improvements, a portion of this work is within the 200-foot Riverfront area of an unnamed stream and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-980**

Joe March and Rich Harrington of Stamski and McNary appeared with Thomas C. Swain, Esq. of Holland & Knight, Fred Groff of D'Agostino Izzo Quirk Architects, Inc. and E. Kay Cowan, Head of Nashoba Brooks School. Revised plans and narrative were submitted which addressed seven alternatives, including an alternative for two tennis courts in response to the Department of Environmental Protection's (DEP) comments. Alternative #6 addressed the Commission's request for splitting the tennis courts and installing them in different locations. The analysis for Alternative #6 revealed that there would need to be a clearing of 17,000 square feet of mature trees. Alternative #7 eliminated two tennis courts but the applicant felt that it did not meet the purpose of the project.

The Commission conducted a site walk on July 22, 2008 and the results of the site walk included (1) that the soccer, field hockey, and lacrosse sports could all share and use a multi-use field which would maintain the 25-foot setback although there would be a slight increase to the field footprint. No tree removal would occur in the Riverfront area. The alteration to the Riverfront area would be reduced, the entry road reduced, one parking space eliminated, additional tree removal would occur along the wall but the size of the fields would be kept at a minimum as the size of the field would accommodate all sports. The Commission asked if the applicant had considered placing Area F in conservation. The concern of the applicant was that the area was naturally restricted because it was in the

Riverfront area. There was also a fire protection easement and access trail easement to consider. Tom Swaim, representing Nashoba Brooks School noted that the school board didn't want to make a long-term commitment and was not in a position to offer the area as a conservation restriction for this project. Attorney Swaim further noted that he was of the opinion that the Commission had no right to require a conservation restriction. Hasso Ewing of Ewing Landscapes and Gardens noted that the revised plan offered mitigation by way of the proposed rain garden, the invasive management plan and the grasses chosen would require no watering after the first month of installation. The Division of Natural Resources staff indicated that the applicant should provide mowing of the meadow twice/year, which mowing would occur no later than October 1<sup>st</sup>. The paths will be mowed to allow accessibility for the school children. The Drainage Report is currently under review the CPW.

This hearing was continued to September 17, 2008.

**HILL / NOI - 107 Westford Road – Tree removal, construction of new stone walls, reconstruction of existing stone walls, and reconstructing a driveway within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-981**

Nick Reed, Landscape Architect appeared with David Crossman of B & C Associates. Mr. Reed indicated that the tree removal and invasive locations were noted on the plan submitted to this evening's hearing. The Commission requested that the bollards be re-installed to permanently demarcate the 25-foot No Disturb Zone. A cut and dab methodology will be established which will commence this fall. The Division of Natural Resources staff requested that David Crossman either identify the grasses on the premises or take that reference out of his report.

This matter was continued to September 17, 2008 at which time the Commission expects to close the hearing and issue an Order of Conditions.

**TOCIO / NOI – 506 Old Bedford Road – Constructing nine (9) single-family residential units, a sewage disposal system and stormwater treatment facility, a portion of which is within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-977.  
Continued to September 17, 2008**

**NATIONAL GUARD ARMORY / NOI – 91 Everett Street – Regrading, installing a subsurface drainage system, clearing debris, and redirecting flow to mitigate basement flooding in Bank, Bordering Land Subject to Flooding and within the 100-foot Buffer Zone to Bank, DEP File #137-982**

Montgomery Lovejoy moved to close the hearing. Steve Verrill seconded. All so voted. Montgomery Lovejoy moved to issue a standard Order of Conditions with Special Conditions #19-44. Steve Verrill seconded. All so voted. Alexander Easterday abstained.

**FOLK / NOI** – 181 Lowell Road – After-the-fact tree removal and wetland restoration in Bordering Vegetated Wetland, Bordering Land Subject to Flooding and within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-983**

David Crossman of B & C Associates appeared with the applicant, Sandy Folk. Alexander Easterday stated that the Commission had prepared an Enforcement Order for failure to act responsively and in a timely manner to the unauthorized removal of nearly 200 trees in wetlands, rare species habitat, and on Town land (Old Calf Pasture). Mr. Easterday stated that the Town Manager may seek additional action against the applicant. Mr. Crossman stated that more information was needed from Natural Heritage in order to prepare the Notice of Intent. Once a proposal has been received from Karra Frost of New England Environmental, the applicant will provide it to the Natural Resources office in time for the next scheduled meeting.

After discussion, Steve Verrill moved to issue an Enforcement Order as amended. Montgomery Lovejoy seconded. All so voted.

This hearing was continued to September 17, 2008.

**GUINThER / NOI** – 94 Elm Street - The proposed project involves installing an irrigation system, restoring an existing retaining wall, constructing a stone wall, tree removal, invasive species removal, brush removal and replacing with landscaped lawn in Bordering Land Subject to Flooding, in the 200-foot Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-987. Continued to September 17, 2008**

**MBTA / NOI** – MBTA bridge over Main Street (Rt. 62) – Replacing the existing MBTA bridge carrying the Fitchburg Line over Main Street, associated approach work, and increasing the vertical clearance over the roadway in the Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-985**

William Grace, Senior Environmental Planner and Gary Bua, Project Manager, both of TranSystems appeared together with Holly Palmgren, Manager of Environmental Construction of the MBTA. Bordering Vegetated Wetland limits have been established on the plans. A thru-bridge, much like the existing bridge, is being proposed. Trees to be removed from the embankment will need to be established in the field and put on the plan. No planting plan or erosion controls have been established at this time. The rail road tracks will not need to be raised over the river. A temporary easement would be established in order to access the slope. The applicant received approval from the MBTA to eliminate the south shoulder. The bridge is being raised to 14 feet to make it a compliant structure. The existing abutment on the east side will be kept and a sidewalk would be installed to allow additional clearance and width. The applicant was asked to supply the Commission with how the access would be done and when with the adjusted limit of work to be shown on the plan. A list of equipment to be used at the wetland level will be provided. Low growth

shrubs will be shown on the plan. Removal of the creosote timbers will be accomplished. A 90% design will be submitted at the end of September or early October.

This hearing was continued to October 1, 2008.

#### NEW APPLICATIONS:

**HARVEY / NOI** – 15 Harrington Avenue – Replacing a failed septic system for an existing single-family dwelling within Bordering Land Subject to Flooding associated with an unnamed perennial stream, the 200-foot Riverfront Area of Second Division Brook and 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-989 Opened and continued to September 17, 2008**

**BJERKE / NOI** – 670 Main Street – Demolition and reconstructing a single-family dwelling, shed removal, constructing a garage, driveway removal and relocation, constructing brick or concrete paver patios, grading, tree removal and replacement within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-990**

Jonathan Bollen of Stamski & McNary appeared together with the applicant, Matthew Hall of Mattworks, Ltd. This project involves an existing 1950s ranch house with an existing porch off the house. Proposed work will take place within the existing footprint and the original foundation will be retained. The existing porch will be removed and a detached garage more on level with Main Street will be constructed. All existing asphalt will be removed. There are 3-4 maple trees under the utility lines on the front street that the applicant will seek advice on from the Concord Tree Warden. Grading will take place up to the 25-foot No Disturb Zone. More definitive markers will be installed to demarcate the 25-foot No Disturb Zone and will be located on the plan. Small granite markers or wooden posts were acceptable to the Commission to accomplish their request.

This hearing was continued to September 17, 2008 at which time the Commission expects to close the hearing and issue an Order of Conditions.

**DIVISION OF NATURAL RESOURCES / NOI** – 100-foot section of trail off 116 Shore Drive – The project involves installing water bars along an eroded section of the trail in the 100-foot Buffer Zone to the Bank of White Pond, **DEP File #137-988**

Delia Kaye made a presentation to the Commission relative to this water bar project which will redirect water flow. A total of six (6) water bars are proposed to help break up the flow and speed of the water. The Town Engineer will assist with the field installation.

Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Conditions #19-41. Steve Verrill seconded. All so voted.

**REQUEST FOR EXTENSIONS:**

**CONCORD COUNTRY CLUB** – 240 Old Road to Nine Acre Corner, **DEP File #137-799**. Montgomery Lovejoy moved to issue a one-year Extension. Steve Verrill seconded. All so voted.

**CLOSE HEARING/ISSUE PERMITS:**

**YOUSEFI** – 241 Barrett's Mill Road, **DEP File #137-986**  
Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted. Steve Verrill moved to issue a standard Order of Conditions with Special Conditions #19-44. Jamie Bemis seconded. All so voted.

**DEPARTMENT OF CONSERVATION AND RECREATION / NOI** – Walden Pond – **DEP File #137-972**

Montgomery Lovejoy moved to close the hearing. Jamie Bemis seconded. All so voted. Montgomery Lovejoy moved to issue a standard Order of Conditions with Special Conditions #19-47. Jamie Bemis seconded. All so voted.

**OTHER BUSINESS:**

**Enforcement Order– Marabello/Boston Bark/874 Barrett's Mill Road**

Attorney Francis A. DiLuna of Murtha Cullina LLP appeared with Mary Trudeau, Wetland Scientist. The Commission conducted a site visit on August 29, 2008. After discussion, the Commission issued an Enforcement Order to John Marabello and Vincent Mula of Boston Bark requiring that the current and historic wetlands be delineated, a restoration plan be prepared, and a Notice of Intent be filed by October 1, 2008. Jamie Bemis stated that the wetland delineation was critical to the process, and that the request made by Mary Trudeau to extend the delineation until winter was not feasible. Attorney DiLuna stated that the timeline of October 1<sup>st</sup> was arbitrary. Alexander Easterday informed Mr. DiLuna that he could forward correspondence to the Commission requesting an extension.

Jamie Bemis moved to issue an Enforcement Order. Montgomery Lovejoy seconded. All so voted.

**Enforcement Order – Hayward Realty Trust/Smith/24 Old Mill Road**

Matthew Smith appeared with David Crossman of B & C Associates. There is a Purchase and Sale Agreement between Matthew Smith as buyer and the Trustees of Hayward Pond Trust as sellers of this property. Attorney John Brady of Dane, Brady & Haydon, LLP appeared on behalf of the Estate of Elsie L. Kennedy and made reference to the fact that the Estate was not the current owner. Paul L. Roach and Allan A. Kennedy, III are the current Trustees of Hayward Pond Trust, 24 Old Mill Road, Concord, MA.

The Commission issued an Enforcement Order requiring that a Notice of Intent be filed by October 1, 2008 for all unauthorized activities in jurisdictional areas. The Enforcement Order also requires that the relocated material to grade a new road be restored to

pre-construction conditions, all jurisdictional areas be delineated (including establishing whether Kennedy's Pond has riverine characteristics), and that a restoration plan be prepared. Natural Resources staff issued a violation letter to Mr. Smith requiring that erosion controls be properly installed and all excavated materials be returned to their former locations by August 27, 2008. As of today, erosion controls have been properly installed but no materials have been replaced to their original locations.

Steve Verrill moved to issue an Enforcement Order. Jamie Bemis seconded. All so voted.

**Trails Committee Member Appointment – Lydia Gregoret**

After discussion, Steve Verrill moved to appoint Lydia Gregoret as a member of the Trails Committee. Jamie Bemis seconded. All so voted.

**Approve June 4, 2008 meeting minutes**

Montgomery Lovejoy moved to approve the meeting minutes as amended. Jamie Bemis seconded. All so voted. Alexander Easterday abstained.

**Approve July 22, 2008 meeting minutes**

This matter was tabled until September 17, 2008 because the three Commissioners present at the July 22 meeting were not all in attendance at tonight's meeting.

**Wetland Bylaw**

A Natural Resources Commission Work Session was scheduled for Monday, September 15, 2008 from 3:00 pm – 4:30 pm, 141 Keyes Road. A meeting notice will be posted.

Montgomery Lovejoy discussed a newspaper article that he would prepare on the importance of conservation restrictions to be published in the Concord Journal in September.

This meeting adjourned at 11:00 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Director

Cynthia L. Gray, Natural Resources Administrative Assistant